

1 WILLIAM A. ISAACSON (*pro hac vice*)
2 PAUL, WEISS, RIFKIND, WHARTON &
3 GARRISON LLP
4 2001 K Street, NW
Washington, DC 20006
Telephone: 202.223.7300
Facsimile: 202.223.7420
wisaacson@paulweiss.com

5 STACEY K. GRIGSBY (*pro hac vice*)
6 COVINGTON & BURLING LLP
7 One CityCenter
8 850 Tenth Street, NW
Washington, DC 200001
Telephone: 202.662.5238
sgrigsby@cov.com

9 DONALD J. CAMPBELL #1216
10 J. COLBY WILLIAMS #5549
11 CAMPBELL & WILLIAMS
12 700 South 7th Street
Las Vegas, NV 89101
Attorneys for Defendant Zuffa, LLC, d/b/a
Ultimate Fighting Championship and UFC

13 UNITED STATES DISTRICT COURT

14 DISTRICT OF NEVADA

15 Cung Le, Nathan Quarry, Jon Fitch, Brando Vera,
16 Luis Javier Vazquez, and Kyle Kingsbury on
behalf of themselves and all others similarly
situated

17 Plaintiffs,

18 v.

19 Zuffa, LLC, d/b/a Ultimate Fighting
20 Championship and UFC,

21 Defendants.

Case No. 2:15-cv-01045-RFB-(BNW)

**ZUFFA'S RESPONSE TO
PLAINTIFFS' EMERGENCY
MOTION TO COMPEL
SPARACINO PLLC TO STOP
COMMUNICATING WITH ABSENT
MEMBERS OF THE PROPOSED
CLASS AND FOR RELATED
RELIEF**

Defendant Zuffa, LLC (“Zuffa”) generally does not wish to get involved in the dispute between class counsel and the Sparacino PLLC (“Sparacino”) law firm. Yet, in its emergency motion (“Motion”), class counsel seeks broad relief, which far exceeds what is necessary to remedy the problem alleged here and would prejudice Zuffa. Paragraphs 4 and 5 of the Proposed Order call for class counsel to send a two-page single space letter (Exhibit 1) to all members of the proposed Bout Class and for Zuffa to provide contact information for all class members. To send this type of classwide communication just prior to any class certification notice would only confuse proposed class members, many of whom Sparacino may not have contacted. Only two of the eight questions in class counsel’s proposed letter even mention the Sparacino communications, and the remainder discuss issues more properly addressed in a class notice. To the extent that a corrective notice is necessary, if at all, such notice should be significantly shortened and targeted to the claimed purpose of correcting allegedly misleading communications. Plaintiffs’ proposed corrective letter, Exhibit 1, does not merely correct the miscommunication, but is a premature and improper class notice document.

Zuffa Should Not Be Required to Produce Class Member Contact Information

Class counsel’s Proposed Order requires Zuffa to produce contact information for “**all persons who meet the definition of member of the Bout Class.**” Class Counsel’s Proposed Order, ECF No. 798 at ¶ 5 (emphasis added). The Proposed Order also seeks permission for corrective notices to be sent to “**all members of the proposed Bout Class.**” *Id.* at ¶ 4 (emphasis added). There is no basis for either of those requests.

If the purpose of the Motion is to enjoin and address communications that Sparacino may have had with certain class members, the Proposed Order is not a proportionate response to the alleged problem. To the extent there were misleading communications warranting some form of correction, the corrective communications should be addressed only to the individuals with whom Sparacino had contact. The Motion does not and cannot justify communications with the entire proposed class.

1 The solution here is simple—Sparacino can tell class counsel exactly with whom they
2 communicated, and the contact information they used to effectuate that communication. The
3 Motion seeks disclosure of that precise information. *Id.* at ¶ 3. If a corrective notice is to be
4 issued, it should be sent to those individuals, using the same contact information that Sparacino
5 used.

6 Paragraph 5 of the Proposed Order is thus nothing more than a fishing expedition for
7 class member contact information across the entire proposed class, regardless of whether
8 individuals were sent the allegedly misleading communications. Disclosure of contact
9 information on such an unfettered scale would interfere with unaffected class members' privacy
10 rights. *E.g., Heredia v. Sunrise Senior Living LLC*, 2019 WL 7865176 (C.D. Cal. Oct. 31, 2019)
11 (requiring putative class members to be given an opportunity to opt-out of disclosure of
12 information prior to the defendant providing class counsel with contact information for a limited
13 sampling of the putative class). In any event, Sparacino is in the best position to provide all the
14 information necessary for corrective communications.

15 Class counsel's Motion does not even attempt to justify the reason for sending a
16 corrective notice to the entire proposed class or requiring disclosure of contact information for
17 the entire proposed class. The Court should therefore reject Paragraphs 4 and 5 of the Proposed
18 Order.

19
20 **If Corrective Notice Is Ordered for the Affected Class Members, the Proposed Form of**
21 **Corrective Notice Should Be Modified**

22 As the Motion notes, Mot. at 7 n.5, Zuffa explained to class counsel that the proposed
23 corrective letter, Exhibit 1, is too long and improperly (and incompletely) crosses into areas that
24 a court-approved class notice will cover, while omitting important information that the class
25 notice should include. Any corrective letter that class counsel are permitted to send to affected
26 class members should be significantly revised and shortened.

27 Specifically, at least the following sections of the proposed corrective letter are
28 unnecessary and should be excised, if any corrective letter is sent at all: (1) "Do I need to take

1 any action to benefit from this litigation against the UFC?"; (2) "How do I know if I am one of
2 the 1,200 or so fighters that may benefit from the lawsuit against the UFC?"; and (3) "Is this a
3 class action?" Those portions of the letter constitute the type of information that should only be
4 included in a formal, court-approved class notice following an order certifying a litigation class.
5 They do not belong in a "corrective" letter prior to issuance of class notice. Other portions of the
6 proposed letter can also be substantially shortened.

7 Courts in the Ninth Circuit have rejected similar attempts to issue "corrective" notices
8 where an official class notice will be sent in quick succession and can provide any necessary
9 corrections. *E.g.*, *Allision v. Dolich*, No. 3:14-cv-1005, 2014 WL 12792546 (D. Or. Dec. 16,
10 2014) (rejecting class counsel's request to send corrective notice because "If this collective
11 action is certified, the initial notice may be framed to remedy any confusion resulting" from
12 allegedly improper communications); *Swamy v. Title Source, Inc.*, No. 17-01175-WHA, 2017
13 WL 5196780 (N.D. Cal. Nov. 10, 2017) ("a corrective notice is unnecessary" because the
14 forthcoming formal class notice would afford "an opportunity to clarify the scope and purpose of
15 the suit" and "provide putative class members with other necessary information for them to make
16 a decision about the suit"). Other courts have also denied attempts to send confusing and
17 overreaching "corrective" notices like the one proposed here. *In re Broiler Chicken Antitrust*
18 *Litigation*, No. 16-cv-8637, Dkt. 3530 (N.D. Ill. Mar. 16, 2020) (rejecting attempt to blanket the
19 class with a corrective notice because future misleading communications were enjoined and class
20 counsel was provided with contact information for recipients of the allegedly misleading
21 communications and could address the recipients on an individualized basis). There is no reason
22 for a different approach here.

23 * * *

24 For the foregoing reasons, any "corrective" notice should be much shorter and targeted
25 only to the recipients of Sparacino's communications—or it should simply wait until there is a
26 formal, Court-approved classwide notice following a potential order certifying the class.

1 DATED: April 08, 2021

2 PAUL, WEISS, RIFKIND, WHARTON &
3 GARRISON LLP

4 By: /s/ William A. Isaacson

5 William A. Isaacson
6 Attorney for Defendant Zuffa, LLC, d/b/a
7 Ultimate Fighting Championship and UFC
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on April 08, 2021, I electronically transmitted the foregoing **Zuffa's Response to Plaintiffs' Emergency Motion to Compel Sparacino PLLC to Stop Communicating with Absent Members of the Proposed Class** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel are CM/ECF registrants.

Dated: April 08, 2021

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

By: /s/ William A. Isaacson
William A. Isaacson

*Attorney for Defendant Zuffa, LLC, d/b/a
Ultimate Fighting Championship and UFC*